

### § 381.9

### 37 CFR Ch. III (7–1–14 Edition)

copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(e) *Filing of use reports with the Copyright Royalty Judges.* (1) PBS and its stations or other public broadcasting entity shall deposit with the Copyright Royalty Judges one electronic copy in Portable Document Format (PDF) on compact disk (an optical data storage medium such as a CD-ROM, CD-R or CD-RW) or floppy diskette of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(f) *Terms of use.* (1) The rates of this schedule are for unlimited use for a period of three years from the date of the first use of the work under this schedule. Succeeding use periods will require the following additional payment: Additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year period thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent

use periods without limitation. Such succeeding uses which are subsequent to December 31, 2017, shall be subject to the rates established in this schedule.

(2) Pursuant to the provisions of 17 U.S.C. 118(e), nothing in this schedule shall be construed to permit, beyond the limits of fair use as provided in 17 U.S.C. 107, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works.

[72 FR 67647, Nov. 30, 2007, as amended at 77 FR 71108, Nov. 29, 2012]

### § 381.9 Unknown copyright owners.

If PBS and its stations, NPR and its stations, or other public broadcasting entity is not aware of the identity of, or unable to locate, a copyright owner who is entitled to receive a royalty payment under this part, they shall retain the required fee in a segregated trust account for a period of three years from the date of the required payment. No claim to such royalty fees shall be valid after the expiration of the three-year period. Public broadcasting entities may establish a joint trust fund for the purposes of this section. Public broadcasting entities shall make available to the Copyright Royalty Judges, upon request, information concerning fees deposited in trust funds.

### § 381.10 Cost of living adjustment.

(a) On or before December 1, 2013, the Copyright Royalty Judges shall publish in the FEDERAL REGISTER a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 2012, to the most recent Index published prior to December 1, 2013. On or before each December 1 thereafter the Copyright Royalty Judges shall publish a notice of the change in the cost of living during the period from the most recent index published prior to the previous notice, to the most recent Index published prior to December 1, of that year.

(b) On the same date of the notices published pursuant to paragraph (a) of this section, the Copyright Royalty Judges shall publish in the FEDERAL

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REGISTER a revised schedule of the rates for §381.5(c)(3), the rate to be charged for compositions in the repertory of SESAC, which shall adjust the royalty amounts established in a dollar amount according to the greater of

(1) The change in the cost of living determined as provided in paragraph (a) of this section, or

(2) Two percent (2%).

(3) Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule for the rates for §381.5(c)(3) shall become effective thirty (30) days after publication in the FEDERAL REGISTER.

[72 FR 67647, Nov. 30, 2007, as amended at 77 FR 71109, Nov. 29, 2012]

### § 381.11 Notice of restrictions on use of reproductions of transmission programs.

Any public broadcasting entity which, pursuant to 17 U.S.C. 118, supplies a reproduction of a transmission program to governmental bodies or nonprofit institutions shall include with each copy of the reproduction a warning notice stating in substance that the reproductions may be used for a period of not more than seven days from the specified date of transmission, that the reproductions must be destroyed by the user before or at the end of such period, and that a failure to fully comply with these terms shall subject the body or institution to the remedies for infringement of copyright.

## PART 382—RATES AND TERMS FOR DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND THE REPRODUCTION OF EPHEMERAL RECORDINGS BY PREEXISTING SUBSCRIPTION SERVICES AND PREEXISTING SATELLITE DIGITAL AUDIO RADIO SERVICES

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AUTHORITY: 17 U.S.C. 112(e), 114 and 801(b)(1).

SOURCE: 72 FR 71796, Dec. 19, 2007, unless otherwise noted.

### Subpart A—Preexisting Subscription Services

#### § 382.1 General.

(a) This subpart establishes rates and terms of royalty payments for the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 114, and the making of Ephemeral Recordings in connection with the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 112(e).

(b) Upon compliance with 17 U.S.C. 114 and the terms and rates of this subpart, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 114(d)(2).

(c) Upon compliance with 17 U.S.C. 112(e) and the terms and rates of this subpart, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 112(e) without limit to the number of Ephemeral Recordings made.

[72 FR 71796, Dec. 19, 2007, as amended at 78 FR 23096, Apr. 17, 2013]

#### § 382.2 Definitions.

For purposes of this subpart, the following definitions shall apply: